

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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In the Matter of )

Policies and Rules )

Governing Interstate Pay-Per-Call )  
and Other Information Services Pursuant )  
to the Telecommunications Act of 1996 )

CC Docket No. 96-146

In the Matter of )

Policies and Rules Implementing )  
the Telephone Disclosure and Dispute )  
Resolution Act. )

CC Docket No. 93-22

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**COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA  
AND THE PUBLIC UTILITIES COMMISSION OF THE STATE  
OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING**

Respectfully submitted,

PETER ARTH, JR.  
EDWARD W. O'NEILL  
MARY MACK ADU

Attorneys for the People of the  
State of California and the  
Public Utilities Commission  
of the State of California

505 Van Ness Avenue  
San Francisco, CA 94102  
(415) 703-1952  
(415) 703-4432 (FAX)

August 23, 1996

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**I. INTRODUCTION AND SUMMARY**

The People of the State of California and the Public Utilities Commission of the State of California (California or CPUC) respectfully submit these comments to the Federal Communications Commission (FCC or Commission) on the Notice of Proposed Rulemaking (NPRM) regarding Interstate Pay-Per-Call and other information services. The FCC proposes additional rules to implement requirements of the Telecommunications Act of 1996 (hereinafter, the 1996 Act) that amend the Communications Act provisions designed to combat customer abuses by service providers and other entities in providing interstate information services. We support those rules to the extent that they close existing loopholes, protect consumers from unexpected charges, and do not jeopardize basic telephone service.

## II. DISCUSSION

### A. Additional Regulations May Be Necessary to Protect Consumers from Certain Practices by Common Carriers Involved in Transmitting Interstate Information Services

With the passage of the 1996 Act, Congress amended Section 228 of the Communications Act of 1934 to address abusive practices by some common carriers that subjected customers to unexpected charges for information services.<sup>1</sup> For example, when customers call "800" numbers, they normally do not expect to incur charges; however, changes in technology and billing practices make this no longer so. The FCC asks whether additional regulations are necessary to protect unsuspecting customers (§41). We think so.

The amendment of Section 228 was triggered by evidence that information providers have apparently attempted to avoid consumer safeguards applicable to "900" number services.<sup>2</sup> Congress wanted to ensure that customers be: 1) provided basic information regarding the price and other material terms and conditions applicable to interstate information services before agreeing to purchase them; 2) able to block access to unwanted services; and 3) protected from disconnection of basic communications services for failure to pay information services charges. (NPRM, §40) One of the ways of avoiding these customer protections was to use the "tariff exemption." Any service offered pursuant to tariff was exempted from the definition of "pay-per-call service" and

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1. See Pub. L. 104-104, Sec. 701, 110 Stat. 56 (1996), codified as 47 U.S.C. §228.

2. California ordered a number of consumer safeguards for customers who subscribe to "900" service, including: 1) requiring a disclosure message containing billing information and billing delay; 2) providing that the nonpayment of 900 charges will not result in the termination of basic service; and 3) allowing the blocking of "900" numbers without charge. (See Re US Telecom, Inc., dba Sprint Services (1991) 39 CPUC 2d 397, D.91-03-021.)

the regulations that went along with it. The rules proposed by the FCC would close that loophole.

**B. "Presubscription or Comparable Arrangement"  
Should Be Redefined**

The FCC proposes to revise the definition of "presubscription" to include a requirement that all such arrangements, not just those involving toll-free service, should be executed in writing, or, alternatively, through payment by direct remittance, prepaid account, or debit, credit, charge, or calling card. (NPRM, ¶42) It also proposes to require that presubscription agreements must be executed by a legally competent adult. We believe the latter proposal is in everyone's best interests. The FCC appears to be taking a forward-looking approach in anticipating future abuses.<sup>3</sup> If the FCC opts to take this approach, the FCC should balance the safeguard requirements so that abuses will be kept to a minimum, while allowing information providers to provide legitimate services to informed customers.

**C. Restrictions On the Use of Toll-Free Numbers**

Section 228(c)(7) of the 1934 Act places limits on the use of toll-free numbers to protect the calling party only. The FCC proposes to amend its rules to state explicitly that the protections afforded to the calling party also apply to the subscriber of the originating line. (NPRM, ¶44) The stated purpose is to ensure that a telephone subscriber will not be billed for information services obtained by another person who uses the subscriber's line to place calls to numbers understood to be toll-free. This rule appears to be a needed refinement

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3. The FCC acknowledges that "virtually all complaints involving purportedly presubscribed information services have involved programs available through 800 numbers...we are concerned that...the same 'instant presubscription' abuses experienced by 800-number callers under oral presubscription might emerge on other dialing sequences." (NPRM, ¶42)

over the previous rule because it is the subscriber whose number would be captured by ANI, and the subscriber who would be charged if someone uses his line to make an ostensibly toll-free call.

**D. Billing and Collection of Pay-Per-Call & Similar Service Charges**

The FCC proposes separate identification of charges for such calls as "800" calls, which are normally toll-free. (NPRM, ¶46) We agree with this proposal, as it is consistent with California's explicit statement rule which provides that information provider charges are separate from telephone company tariffs.

**E. Redefinition of Pay-Per-Call to Remove the Tariffed Services Exemption**

In spite of the repeal of the tariffed services exemption from the "pay-per-call" definition, the FCC is concerned that some entities will attempt to circumvent the law. Accordingly, the FCC tentatively concludes that when a common carrier charges a telephone subscriber for a call to an interstate information service, any form of remuneration from that carrier to an entity providing or advertising the service, or any reciprocal arrangement between such entities, is *per se* evidence that the charge levied exceeds the transmission charge. (NPRM, ¶48) The result would be that interstate services provided thusly would be subsumed under the "pay-per-call" definition and be required to be offered only through 900 numbers with appropriate consumer protections.<sup>4</sup> This conclusion is worthy of support if it will

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4. The FCC adopted certain protective measures to combat widespread abuse involving 900 number services: (1) pay-per-call programs must begin with a preamble disclosing the cost of services, and allowing the caller a chance to hang up before incurring charges; (2) LECs, where technically feasible, must offer subscribers the choice of blocking access to 900 numbers, and (3) common carriers were prohibited from disconnecting basic telephone service for failure to pay "pay-per-call" charges. (NPRM, ¶3)

prevent customer abuse and close loopholes that would otherwise allow carriers and other entities to reap illicit profits from sharp practices.

### III. CONCLUSION

In response to the 1996 Act's amendment of Section 228(c) of the Communications Act which closes the tariff exemption loophole that allowed information provider abuses, the FCC has proposed rules to implement that statutory mandate. To the extent that consumer protection is preserved in the development of legitimate pay-per-call interstate services, the CPUC concurs with the FCC. We therefore submit these comments for your consideration.

Respectfully submitted,

PETER ARTH, JR.  
EDWARD W. O'NEILL  
MARY MACK ADU

By: /s/ MARY MACK ADU  
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Mary Mack Adu

Attorneys for the People of the  
State of California and the  
Public Utilities Commission  
of the State of California

505 Van Ness Avenue  
San Francisco, CA 94102  
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August 23, 1996

CERTIFICATE OF SERVICE

I, Mary Mack Adu, hereby certify that on this 23rd day of August, 1996 a true and correct copy of the forgoing **COMMENTS OF THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA ON THE NOTICE OF PROPOSED RULEMAKING** was mailed first class, postage prepaid to all known parties of record.

/s/ MARY MACK ADU

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Mary Mack Adu